Housing Innovations Fund IV
Loans for Innovative and Alternative Forms of Housing

Program Guidelines

Commonwealth of Massachusetts
Department of Housing and Community Development
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GUIDELINES FOR THE HOUSING INNOVATIONS FUND IV

These Guidelines, produced by the Department of Community Development (DHCD) in conjunction with the Community Economic Assistance Corporation (CEDAC), clarify and supplement the statutory and regulatory requirements of the Housing Innovation Funds IV program. The purpose of the Guidelines is to help affordable housing developers understand the key requirements for the HIF program, the application and award process for securing HIF funds, and the loan closing and post-closing requirements for HIF borrowers. Since the Statute and Regulations are not definitive in all of the ways necessary to implement the HIF IV program, the Guidelines provide some interpretation of statutory and regulatory requirements. Such interpretations are not intended to have the force and effect of law and regulation, and they are subject to appeal to and waiver by the Director of DHCD.

HIF loans must be made through a Financial Intermediary as required by the statute. DHCD has designated the Community Economic Development Assistance Corporation (CEDAC) as the Financial Intermediary for the HIF program. CEDAC underwrites HIF loan applications for DHCD, closes the HIF loans, and holds the HIF notes, loans, and mortgages.

These Guidelines are intended to be helpful to potential HIF borrowers and contain as much information as reasonably possible. If you have a question that is not answered here, please contact CEDAC (617-727-5944) or DHCD (617-727-7824) directly.

I. Introduction and Program Summary

In 2002, the State Legislature enacted a new Housing Bond Bill, an Act Relative to the Development and Preservation of Affordable Housing (St. 2002, c. 244) authorizing DHCD to use $35 million for the creation and retention of alternative forms of housing for low-income and extremely low income persons and families. This was the fourth authorization of the HIF program, hence HIF IV. This statute prompted DHCD to amend the regulations for the HIF program at 760 CMR 23.00.

By statute, an alternative form of housing is a residential development that involves:

- An unusual or specialized level of management or social services.
- An innovative financing or ownership structure.
- Innovative features including, without limitation, any of the following types of housing: single room occupancy housing; transitional housing for the homeless; limited equity cooperative housing; battered women's shelters and transitional housing for battered women and their families; employer assisted housing; housing in receivership; lease-to-purchase housing; and housing in college communities.

HIF IV will provide **permanent, deferred payment loans for a term of 30 years**. Extensions of the loan term may be granted by DHCD for an unlimited number of successive periods, each period not to exceed ten years, as long as the project continues to provide affordable housing consistent with the HIF program. HIF IV funds may cover up to 50% of a project's Total Development Cost (TDC) within the maximum loan amount, which is $500,000 per project.

Housing financed through the HIF program must be developed by Massachusetts Chapter 180 non-profit organizations. At least 50% of the units must be reserved for persons whose incomes are less than 80% of the area-wide median income as determined from time to time by the United States Department of Housing and Urban Development (HUD), and of such reserved units, at least 50% (that is 25% of the total housing units) must be reserved for persons whose incomes are less than 30% of the area-wide median income.

Applicants for HIF IV loans should be aware that these loans come with the following long-term covenants:

- Loans are provided subject to recorded land-use restrictions.
- HIF loans may not be pre-paid without the expressed written consent of CEDAC and DHCD, which will only be granted in rare circumstances.
- Refinancing of a HIF project's first mortgage is only allowed where there is a clear financial benefit to the Commonwealth of Massachusetts from such refinancing.

II. Eligibility Requirements

1. Eligible Uses of HIF Funds

HIF funds may be used for:

- Acquisition of real property,
- Construction and renovation of residential buildings, and/or
- Soft costs directly related to development of residential units.

Acquisition

HIF funds may be used for the acquisition of property as part of a feasible and ready-to-proceed project to develop HIF-eligible units. The acquisition borrower will be required by the terms and conditions of the HIF loan documents to ensure timely completion of the project and its continued eligibility for HIF funds. HIF funds will not be awarded for acquisition loans unless all other critical financing commitments have been secured.

Construction

HIF funds may be used for new construction or rehabilitation, and may be drawn down by the borrower, as required, during the construction period. CEDAC will monitor construction to confirm, prior to disbursement of each loan draw, that the work has been completed as represented. CEDAC may elect to accept the monitoring reports of a senior lender, either private or public. Alternatively, CEDAC may engage its own construction inspector, and charge the cost to the Borrower.

Soft Costs
HIF loans may be used for soft costs, within reasonable limits, associated with the acquisition, rehabilitation and construction of HIF eligible projects. Soft costs may include the types of General Development Costs listed in the "One Stop" HIF Application (Section 3. Sources and Uses of Funds, lines 59-85 as well as capitalized reserves, developer overhead and developer fees. Capitalized reserves may be limited by statutory HIF requirements; consult with DHCD or CEDAC.) Developer overhead and fees are limited to amounts delineated in the Qualified Allocation Plan (QAP) for Low-Income Housing Tax Credit program, issued annually by DHCD.

2. Eligible Developers of HIF Projects

HIF projects must be developed by:

- A non-profit developer organized under Chapter 180 of Massachusetts General Laws (MGL); or
- A limited equity cooperative corporation, (organized under Chapter 157B of MGL); or
- A single purpose owner corporation affiliated with and controlled by a non-profit (e.g. a tax credit partnership).

The non-profit developer corporation will be required to show documentation of 501(c)3 status from the US Internal Revenue Service (IRS) prior to closing of a HIF loan.

Partnerships
A for-profit developer may act in a joint venture with a non-profit developer if the non-profit has at least 51% controlling interest in the joint venture. In all cases, the non-profit developer will be required to certify the following:

- No member, shareholder, officer or employee of such corporation or its board of directors may profit directly, or indirectly, from the HIF assistance or from the eligible project;
- The board of directors receives no compensation;
- No earnings of the non-profit inure to the benefit of any individual, corporation or other entity.

Applicants are encouraged to review *The Attorney General's Guide for Board Members of Charitable Organizations* for additional guidance regarding the responsibilities and obligations of members of the Board of Directors of non-profit and charitable organizations.

Developer Capacity
CEDAC will review the capacity of a developer to successfully undertake development, ownership and management of a proposed project. The track record of the developer in completing similar projects, record of service in the community, current financial statements, net worth, and compatibility of mission will be taken into consideration in reviewing the qualifications of the developer. CEDAC will also strongly consider a developer's standing with DHCD.

3. Income, Occupancy and Rent Level Requirements

Income and Occupancy

While many HIF projects provide housing exclusively for low-income populations, no fewer than 50% of the total units must be reserved for the term of the HIF financial assistance for occupancy by individuals or families whose incomes are below 80% of the area median ("Low-Income Persons or Families"). Within this percentage, at least half of the units (25% of the total number of units) must be reserved for those households whose incomes are below 30% of the median ("Extremely Low-Income Persons or Families"). For example, in a 12-unit development, a minimum of 6 units must serve households below 80% of the area median income of which 3 units must be reserved for households below 30% of the area median income. In cases where occupancy calculations result in fractions of units, e.g. 50% of a 7-unit building=3.5 units, rounding up is required, e.g. 4 units required to be Low-Income with 2 units for Extremely Low-Income households.

Rents Level

At initial occupancy, in projects without operating subsidy, rents for the Low- Income units must be set no higher than 35% of 80% of the area median income (AMI) adjusted for family size as determined from time to time by HUD. At initial occupancy, rents for Extremely Low-Income units must be set at 35% of 30% of the median family income as determined by HUD. After initial occupancy, rents may be increased by reasonable increments. The percentage of increase permitted by HUD for the Section 8 program is considered an indicator of rent reasonableness and other valid surveys of rent markets may be accepted. Annual income verification for tenants in Low-Income and Extremely Low-Income units is required to confirm continued eligibility for occupancy in designated units. Upon unit turnover, rents must be calculated using the formula above for designated Low-Income and Extremely Low-Income units. These requirements are included and thoroughly specified in the Development Loan Agreement for a HIF loan.

III. Loan Terms

HIF funds are provided as deferred payment loans (DPLs). The loan constitutes a debt that is documented by a note and secured by a mortgage on the real property. The borrower must also comply with a Development Loan Agreement that delineates various terms and conditions of the loan, including the occupancy, income and rent level restrictions. Finally, a Land Use Restriction (LUR) ensures the continuing use of the property for the intended public purpose: as innovative and affordable housing.

1. Amount of Assistance

Generally, HIF funds may finance up to 50% of the total development cost of a project but not more than $500,000 per project. For battered women's shelter projects, the amount of the HIF loan may finance up to 80% of the TDC but not more than $2.5 million. However, 80% HIF loans are subject to the availability of funds and are considered only in cases where other resources are not available.

Developers proposing such projects should consult DHCD and CEDAC at the pre-development stage. For all projects, the least amount of funding necessary to assure project feasibility is provided.

2. Loan Terms and Repayment

The term of HIF loans is 30 years. At maturity, the Director of DHCD may extend a HIF loan for an additional period of up to 10 years. Thereafter, as long as the housing continues to comply with the requirements set forth in the loan documents, additional 10-year extensions may be approved. No repayment is due before the loan maturity date unless the development's gross cash receipts, in any year fiscal year, exceed the gross cash expenditures by 105%. The HIF borrower must provide annual audited financial statements to CEDAC certifying annual cash receipts and expenditures.

3. Interest Rate and Terms

The interest rate on HIF loans is determined by the Director of DHCD in consultation with the Treasurer of the Commonwealth. Interest is deferred but accrues for the initial 20 years of the 30-year HIF loan term, except in any year that gross cash receipts exceed gross cash expenditures by 105%. The amount by which gross cash receipts exceeds 105% of gross cash expenditures must be paid to CEDAC and it is applied first to reduce accrued interest and then to the principal balance. After the 20th year of the loan, interest does not continue to accrue as long as the loan is not in default.

4. Land Use Restriction

HIF projects are subject to a recorded Land Use Restriction requiring continued use as alternative, affordable housing. This restriction can be released only under the following circumstances:

- Upon payment in full of all amounts due under the HIF loan.
- Upon recording of a foreclosure deed by the holder of a mortgage senior to the HIF loan.

HIF loans may not be pre-paid, except by waiver of the Director of DHCD. Among other conditions, waivers are approved only if the affordable units will be replaced at another site, and an acceptable relocation plan is proposed.

5. Purchase Option and First Refusal Option

As part of the Land Use Restriction, HIF borrowers grant DHCD a purchase and a first refusal option. This option gives DHCD the right to purchase the project at a price equal to its appraised value less the balance of principal, interest and any other charges payable under the HIF loan. The option can be exercised if the owner wishes to sell or otherwise convey the HIF project, upon the expiration of the 30-year term of a HIF loan, or upon default by the borrower. The borrower is required to notify DHCD in writing if sale or transfer is planned, and give DHCD at least 120 days to exercise the purchase and first refusal option. DHCD has the right to assign this option to another HIF-eligible entity.

6. Loan Position

HIF loans are typically subordinate to a senior private- or quasi-public sector loan, sharing a second position with comparable (typically public) funding sources. However, more junior loan positions may be negotiated if it is absolutely necessary in order to provide security for other lenders. A waiver from the Director of DHCD is required for HIF loans in lower than third position

7. Refinancing HIF Projects

Borrowers must obtain the written approval of CEDAC and DHCD in order to refinance a HIF project. DHCD will approve refinancing only if it is clearly in the interest of the Commonwealth and the residents of the HIF development. Examples of acceptable refinancing proposals include:

- Refinancing to reduce interest or other payments on primary debt, with the added revenue enabling the project to remain solvent, increase contributions to replacement reserve, or reduce costs to a state agency that pays some or all of operating costs.
- Refinancing to reduce interest or other payments or to permit an increase in debt to make essential improvements such as life-safety systems or accessibility. Such improvements must enhance safety and quality of life for the residents.

Since financial stability is critical to the long-term viability of HIF projects, refinanced debt with a repayment term of at least 15 years duration, at a fixed rate of interest, is preferred.
Under no circumstances will CEDAC approve the use of a HIF property as collateral for non-HIF debt such as an organizational credit line, or for financing of a non-HIF property.

Borrowers considering refinancing should contact CEDAC, at the earliest opportunity, to discuss the proposal.

8. Waiver for Federally Funded Projects

The HIF legislation contains a provision to avoid having the terms and conditions of the HIF program preclude the use of federal funds on a HIF project. Developers working on federally funded project should assess how the HIF requirements interact with federal requirements. If there are conflicts, contact DHCD. DHCD may be able to provide assistance in resolving conflicts federal authorities, and may provide the specific waivers needed to allow the use of federal funds.

IV. Underwriting Standards

Although DHCD has the final authority to make HIF awards, CEDAC carries out an underwriting review of all HIF applications. CEDAC considers the following factors in underwriting HIF loans.

1. Project Feasibility

The terms of the other financing commitments, the security and length of the income stream, and the costs of the project are evaluated. To insure the long-term financial stability of the project, first mortgage loans should have long term fixed rates. Terms of at least 15 years are preferable. If other public agencies are providing income or funding for critical services, CEDAC investigates the likelihood of ongoing funding, and may require alternate plans in the event that the funding stream is no longer available. Cost estimates are thoroughly reviewed. Professional cost estimates by an estimator with substantial experience in the estimating cost for type of project being proposed, or well-developed bids from a qualified contractor are highly recommended.

2. Site Considerations

The site of a proposed project should meet the following criteria:

- It should be appropriate for the residents and their needs.
- It should be environmentally sound without extraordinary cost for remediation.
- The cost of acquiring should be reasonable based on current market conditions. A recent appraisal may be required. In most cases, appraisals produced for other lenders will be accepted.
- The acquisition must be an arms-length transaction.

3. Development Team Capacity

The development team must have a demonstrated ability to develop the project in all respects, including capacity to complete the HIF firm commitment process in a timely manner, conduct community review and approval processes, resolve permitting and zoning requirements, complete planning, design and engineering activities, oversee bidding and construction management, coordinate loan closing and other legal transactions, and manage the property upon completion and provide relevant supportive services. Given the highly competitive nature of HIF funding rounds, the inability to demonstrate previous relevant experience in any part of the development process may put an applicant at a competitive disadvantage. It is highly recommended that applicants assemble an experienced and capable team, including if needed, an affordable housing development consultant to coordinate development activities, respond to DHCD and CEDAC's requests for additional information and documentation, and generally ensure that project development stays on the "critical path".

The following criteria will be considered in evaluating the development team:

- The developer's track record in developing housing, especially in developing affordable housing.
- The developer's record of service to the community in which the project is located or to the constituency that the project serves. References may be sought.
- The compatibility of the project with the developer's mission.

- The financial soundness of the lead development entity. Audited financial statements for at least two previous years must be submitted.
- The demonstrated competence and experience of the consultants to the developer. Consultants should have directly applicable experience.
- The developer's record of performance and standing in DHCD and other public programs. Developers not in compliance with the requirements of any program funded by DHCD should not apply for HIF funds until all outstanding issues are resolved.

4. Development Costs

Limits on Costs

The Total Development Costs should include all hard and soft costs including developer fees and capitalized reserves. Projects with total costs in excess of limits established by DHCD for the Low Income Housing Tax Credit program will be considered high cost projects and will be required to justify costs. There are several ways that sponsors can attempt to justify costs:

- Demonstrate specific project features are essential for the resident population.
- Show that special design features are necessary such as handicapped accessibility.
- Demonstrate that the resident population requires proximity to nearby services or facilities.

The choice of an inappropriate site requiring extensive reconfiguration to meet program or client needs or a higher than appraised value acquisition will not be considered justification of higher costs. Developers are encouraged to choose sites which are residential in nature and do not require extensive modifications to serve the needs of the target population. DHCD amends cost guidelines from time to time based on updated market analysis.

Developer Fees

Total development fees, defined as the total of developer fee plus developer overhead plus development consulting fees, must meet the following standard:

- Total fees must not exceed 15% of the first $3 million of the TDC (excluding development fees).
- Total fees must not exceed 12.5% of the portion of the TDC (excluding development fees) from $3 million to $5 million.
- Total fees may not exceed 10% of the portion of the TDC (excluding development fees) above $5 million.

For projects with TDCs in excess of $5 million, total development fees may be capped. For all projects, developer's fees must be demonstrably reasonable. DHCD and CEDAC may request and review a detailed breakdown of proposed developer's fees showing the scope of the consultant work by task, and the amount attributable to each task.

Development Services Procurement

In procuring and contracting for housing development services such as architectural, engineering, legal, development consulting, and construction services, HIF applicants must demonstrate that they have received the advantage of the competitive market place and achieved a fair value. DHCD reserves the right to require any HIF applicant to conduct a formal bid process, including at least three competitive bids obtained in a free, fair and open process. Further, DHCD expects:

- Competitive bids to be sought for all services. Three valid bids, submitted by qualified parties, based on an adequate description of the scope of work, constitute an acceptable competitive bid process in nearly all circumstances.
- For construction services, bids are based on plans and specifications of sufficient detail that an accurate fixed price could be obtained.
- Transactions to be “at arm's length”.
- Contracted prices to be within standard market parameters. DHCD reserves the right to require re-bidding of high cost projects, with costs in excess of 10% of comparable market situations.
- Proposed providers to be well qualified.
- The bid process to include effective outreach to minority-owned and women-owned businesses.

If formal competitive bids have not been obtained, CEDAC may require other evidence of competitive bidding such as a cost estimate by a professional, third party cost estimator, to ensure that a fair and competitive value is being obtained. However, in all cases, DHCD reserves the right to require a competitive bidding process.

Rehabilitation\Construction Standards

Projects must be efficiently designed to meet the needs of the residents. They should be safe, attractive, durable and maintainable. The goal should be to design a project that can be readily maintained for its full use throughout the 30-year term of the HIF loan. For most HIF projects, operating budgets are constricted, and reserves do not prove sufficient over time to afford extensive capital replacement. For rehabilitation projects, a full scope of renovation, based on an assessment of capital needs over a 30-year period, is highly recommended. Most projects require substantial rehabilitation to ensure their full use over this extended period without further substantial capital replacement. HIF applicants should:

- Engage highly qualified architects, engineers and contractors with extensive and successful experience in affordable housing design and construction. Applicants must make have a substantial outreach effort to recruit such qualified firms.
- Emphasize to consultants the critical importance of adhering to all safety, accessibility, environmental, historical, building code and other regulatory requirements. Until these issues are fully investigated and resolved, the project cannot proceed to firm commitment and closing of a HIF loan.

- Emphasize to consultants the importance of a high quality, durable project. Do not assume that capital funding from HIF or other sources will be available in the future.

Applicants should expect that the qualifications of their consultants to be carefully reviewed, and DHCD reserves the right to require applicants to hire capable and experienced consultants. Further, consultants should expect an extensive and critical review of plans, specifications, and cost estimates by highly qualified and experienced reviewers hired by DHCD or CEDAC. As a result of design review, consultants may be asked by DHCD or CEDAC to consider alternative designs, materials, and systems. DHCD and CEDAC expect consultants to be highly responsive to design review recommendations, and make a conscientious effort to improve designs as requested.

Operating Costs

In the HIF application, a 20-year operating budget is required. Applicants should be prepared to verify their operating assumptions and projects based on historical data for similar projects. At a minimum, CEDAC requires projected operating costs to be based on verified prices for various goods and services, and to be comparable to other HIF or similar projects. DHCD reserves the right to require inexperienced operators to be assisted by more experienced management firms for the initial period of the HIF loan.

Reserves

In consultation with primary lenders, HIF applicants should determine an appropriate level of capital and operating reserves. Often, a primary lender requires operating or capital reserves. In this matter, DHCD and CEDAC usually defer to the primary lender. In any case, the developer must demonstrate that the reserves are adequate and agree that the reserves will remain available so that the property will be well maintained and upgraded when necessary. Particular attention should be paid to building reserves for replacement of major building systems at the end of useful life.

Relocation

If a proposed rehabilitation project is occupied, the developer must carry out relocation in accordance with MGL C. 79A and 760 CMR 27.00. Key provisions of these requirements are:

- For HIF projects, relocation must be temporary; permanent relocation is not permitted.
- Nearly always, relocated households have an unalterable right to return to occupancy in a "comparable" unit after work is completed. For a unit to be "comparable", it must often be better than the unit vacated.
- Relocated households must be provided decent, safe and sanitary housing. Further, relocated households have substantial discretion to accept or refuse relocation units.
- Relocated households must be reasonably and fairly reimbursed for all relocation expenses.

DHCD's Relocation Officer provides technical assistance to developers of HIF units requiring relocation.

5. Affirmative Marketing and Tenant Selection

The developer must prepare an affirmative marketing and tenant selection plan. This plan must demonstrate how the applicant will conform to all applicable fair housing requirements throughout the term of the HIF loan.

6. Service Program

A service program is an integral part of most HIF projects. Applicants proposing to serve populations in need of support services must submit a service plan and demonstrate how (and how long) it will be funded. Most HIF developers secure service funding for an initial extended period of at least five years. Service plans must demonstrate a thorough understanding of the needs of the population to be served, typically gained through long experience, and an ongoing commitment to ensuring that appropriate services will remain available. Developers may be awarded HIF funds based on service plans but before a firm commitment of HIF funds is made, a firm funding commitment for services is required. The service plan must be carefully coordinated with (property) management.

7. Considerations for Specific Project Types

Single Person Occupancy (SPO) Units

Preservation and new construction of single person occupancy (SPO) units, also known as rooming or lodging house units, are a high priority for the HIF program. DHCD and CEDAC are committed to assist developers in meeting the substantial challenges of developing SPO housing units. Among the typical challenges, is upgrading the life safety and essential physical amenities of SPO housing, most of which has been severely depleted. Developers are encouraged to have a ratio of units to full bathrooms of not more than 4:1 in SRO projects. Also, developers are encouraged to provide at least minimal meal preparation and cooking facilities in each SRO unit. Where the building configuration or high costs make it impossible to provide adequate baths or meal facilities, developers must demonstrate that facilities are adequate to meet the needs of residents.

Cooperative Housing

Cooperatives must be limited equity cooperative housing corporations under MGL C. 157B and must demonstrate that plans for the transfer of ownership shares in the cooperative will ensure affordability over time. If a cooperative is to be formed with existing residents, the developer must demonstrate that the decision to create a cooperative is being driven by the current residents. The developer must demonstrate how the cooperative organization will be formed so as to create maximum resident input and control. Strong community support for cooperative ownership will strengthen the application. A plan for ongoing support and training of the residents will be required and, as such, operating budgets must show line items for continued cooperative training and support. If the cooperative is part of a syndicated financing structure, the limited partnership agreement must permit the maximum amount of control by the cooperative corporation over management, budget, resident selection and other day to day decisions affecting the cooperative as well as over refinancing and buyout strategies. A feasible buyout strategy must be presented that demonstrates continued resident control and affordability at the end of the syndication period.

8. Workout of Existing HIF Projects

Projects which received HIF I, HIF II, or HIF III financing, and are proposing a financial restructuring with no change in ownership, are eligible for additional HIF assistance under the following circumstances:

- The project requires major capital improvements to increase habitability or marketability and the project reserves are insufficient to meet the needs.
- The cash flow of the project, because of declining market, loss or reduction of section 8 mobile certificates or MRVP reductions, cannot support the project's existing debt and the debt coverage ratio has dropped below 1.0.
- The financial re-structuring, including the infusion of new capital from the HIF program, creates a feasible project which will remain stable, affordable housing over time.

HIF funds, in most cases, will not be used to reduce the debt of other public or private lenders. Projects in which other lenders participate in the workout by reducing a portion of their debt will have priority for refinancing.

The amount of HIF funding sought in a workout must be the least amount necessary to stabilize the project and ensure that the workout is viable long-term. Project cash flow analysis, ability to attract other equity, concessions by the existing debt holders, and the public benefit and importance of the units to the affordable housing stock will all be factors evaluated in making refinancing determination.

Staff and administrative costs directly related to the workout may be included but no developer fee may be paid with HIF refinancing proceeds.

V. Application Process

The HIF program is designed to assist developers in obtaining debt and equity financing from other public and private sources. The HIF program may provide an early commitment of financing that enables a developer to seek the balance of permanent financing needed.

Applications are only accepted as part of DHCD funding rounds, typically twice each year. Applicants seeking HIF and other DHCD funding must apply for them during the same funding round.

The HIF process involves four key steps: (1) Application and Conditional Commitment (2) Firm Commitment (3) Loan Closing and Disbursement and (4) Monitoring.

1. Application and Conditional Commitment

Developers must use the "One Stop" housing application to apply for HIF. The "One-Stop" is available from the Massachusetts Housing Investment Corporation (MHIC) at (617) 850-1000 or on-line at www.onestopapp.com.

Submit one copy of the "One Stop" HIF Application to both DHCD and CEDAC. CEDAC reviews the application and underwrites the project, making a recommendation to DHCD. If DHCD decides to provide HIF funding, a Conditional Commitment will be issued. The Conditional Commitment letter will state the amount of funding as well as specific conditions that must be met for a Firm Financing Commitment. A HIF Conditional Commitment remains in effect for six (6) months. The Conditional Commitment may be extended beyond the 6-month period. Extensions must be requested from DHCD in writing, with a detailed summary of the project's progress to date. Extensions are usually granted in six (6) month increments.

2. Firm Commitment

Ideally, a Request for Firm Commitment should be submitted to CEDAC within six (6) months of the date of Conditional Commitment. The developer must submit documentation that all of the terms and conditions of the conditional commitment have been satisfied in full, including updated development and operating proformas. (A Firm Commitment Request Form can be obtained from CEDAC or online at www.cedac.org). The submission must also include final plans and specifications, a final construction budget with bid prices from a general contractor, and a development schedule showing that the construction or permanent financing will close within 120 days. CEDAC reviews the Firm Commitment Request and makes a recommendation to DHCD. Typically within a week, DHCD issues the Firm Commitment.

3. Loan Closing and Disbursement

Loan closing should follow a Firm Commitment within 120 days. Upon issuance of a Firm Commitment, DHCD appoints legal counsel to represent its interests in closing the HIF loan. HIF attorneys are responsible for preparing HIF loan documents and conducting HIF loan closings. The maximum estimated legal fees are stated in the Firm Commitment letter. Normally, closing fees of the HIF attorneys are not charged to the borrower. However, some of the added cost of protracted loan closings, resulting from a lack of cooperation by the borrower or the borrower's counsel, may become the responsibility of the borrower. Since most HIF projects involve multiple funding sources, HIF counsel coordinates closing requirements, including due diligence, with other lenders. The terms and conditions of the disbursement of loan proceeds are included in the closing documents. Funds are disbursed by CEDAC in accordance with these provisions.

4. Monitoring

DHCD contracts with an independent firm to monitor HIF projects. Projects that are not monitored through other public programs are prioritized for monitoring. Project owners and management are advised well in advance of monitoring visits and asked to submit current project information prior to an on-site visit. Monitoring focuses on ensuring that the terms and conditions of the Development Loan Agreement are being met, including conditions relating to the income-eligibility of occupancy, rent levels, fair housing, property maintenance, insurance, record keeping and other management functions. For further information on monitoring, contact the Director of the HIF program at DHCD's Division of Private Housing at (617) 727-7824.

Appendix A

Definitions

Alternative Form of Housing: A Residential Housing Development that involves an unusual or specialized type of management or social services, an innovative financing or ownership structure, or other innovative features as determined by DHCD.

Application: An application for a HIF loan, using the One Stop Application with all required attachments, including a description of a proposed project, a sources and uses spreadsheet, a 20 year projected operating budget, and all other information required in the One Stop Application.

Creation of Housing: New construction, rehabilitation of an existing building, or the conversion of an existing non-Eligible Project to an Eligible Project.

DHCD: The Department of Housing and Communities Development (including, where applicable, its predecessor, the Executive Office of Community Development).

Deferred Payment Loan (DPL): A loan secured by a mortgage on an Eligible Project which defers the repayment of principal and interest (if any) for a defined or undefined period of time. Although payment is deferred, interest may accrue for some or all of the term of the loan.

Developer: The initiator of an Eligible Project and its permitted successors and assigns. The Developer may also be the owner of the Eligible Project, but need not be the owner, so long as (i) such Developer has control of the site pursuant to a ground lease or other instrument acceptable to DHCD, in its discretion, for a period at least equal to the term of the applicable HIF loan; and (ii) the owner assents to the developer's execution, delivery and recording of the Land Use Restriction, and executes and delivers the Land Use Restriction and such additional documentation as DHCD may require, in its discretion, regarding the rights of DHCD and/or any Financial Intermediary with respect to the site.

Eligible Project/Use (Project): The acquisition, construction, renovation and/or rehabilitation and the operation of an Alternative Form of Housing that meets the requirements of 760 CMR 23.03. Such housing may include any of the following types of housing owned and operated by a Non-Profit Corporation: Single Room Occupancy Housing, Limited Equity Cooperative Housing, Transitional Housing, Special Needs Housing, Mutual Housing, Expiring Use Restriction Housing, and other forms of housing as determined by DHCD. For HIF IV, such housing may also include any of the following types of housing owned and operated by a Non-Profit Corporation: Employer Assisted Housing, Housing in Receivership, Lease-to-Purchase Housing, and Housing in College Communities.

Employer Assisted Housing: An Eligible Project undertaken jointly with a local employer that has agreed to devote private resources to the Project, in connection with which the participating employer may obtain dedicated housing units for Low-Income or Extremely Low-Income employees.

Expiring Use Restriction Housing: A Residential Housing Development that is acquired by a Non-Profit Corporation or a Limited Equity Cooperative Housing Corporation under Title II of the National Emergency Low Income Housing Preservation Act of 1987 or Title VI of the National Affordable Housing Act of 1990.

Extremely Low-Income Person or Family: A single person or family whose adjusted income is less than or equal to 30% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined from time to time by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to Section 8 of the United States Housing Act of 1937, as amended.

Financial Intermediary: The Community Economic Development Assistance Corporation, the Massachusetts Housing Finance Agency, the Massachusetts Development Finance Agency (formerly the Massachusetts Government Land Bank), a local housing authority, a redevelopment authority, a community development corporation, or, in the case of HIF IV, a Non-Profit Corporation that has been certified by the United States Department of Housing and Urban Development as a "community development housing organization" as defined in 24 CFR § 92.2, which entity serves as the conduit for HIF loan funds and is not a member of the Developer's team.

Financially Feasible Project: An Eligible Project that is likely to secure binding financial commitments from other funding sources which, together with HIF funds, total the budgeted amount necessary to develop and operate the Project.

Firm Financing Commitment: A binding written commitment to fund a HIF I, HIF II, HIF III, or HIF IV loan, summarizing the terms and conditions of such loan, which will be issued when the conditions of the conditional funding reservation letter (if any) have been satisfied.

Gross Cash Expenditures: All expenses paid out by the Project, including: all payments of principal and interest (if any) and any other debt service on outstanding loans, all operating and maintenance expenses, and reasonable payments into capital and operating reserves for the Project.

Gross Cash Receipts: All cash collections received by the Project from all sources, with the exception of documented contributions, donations and grant proceeds.

Housing Development Agencies: Any of the authorities through which DHCD is authorized to administer the HIF IV program pursuant to the HIF IV Legislation.

Housing in College Communities: Residential Housing intended to address the need for housing for Low-Income Persons and Families and Extremely Low-Income Persons and Families in communities that have experienced a particular shortage of such housing due to the demand for housing by students and faculty of institutions of higher learning; the housing may involve Eligible Projects undertaken jointly by municipalities or Housing Development Agencies and institutions of higher learning where a Non-Profit Corporation has been designated to develop and manage the Project(s).

Housing in Receivership: Residential Housing for which a receiver has been appointed by a court pursuant to M.G.L. c.111 §127I (as it may be amended from time to time).

Land Use Restriction: A required agreement between DHCD, CEDAC, and the Owner of a HIF project restricting all or some of the units in a Project to use as an Alternative Form of Housing for Low-Income Persons or Families and Very Low-Income Persons or Families or Extremely Low-Income Persons or Families. A Land Use Restriction can only be extinguished if the HIF loan is paid in full, with all accrued interest, or a senior lender forecloses on the Project.

Lease-to-Purchase Housing: Residential Housing that may be purchased by a tenant of such housing pursuant to a lease-purchase agreement between the tenant and the owner; the housing must be purchased within 36 months of entering into the lease-purchase agreement, and the homebuyer must qualify as a Low-Income Person or Family at the time of entering into the lease-purchase agreement.

Limited Equity Cooperative Housing: A Residential Housing Development that is owned by a Limited Equity Cooperative Housing Corporation.

Limited Equity Cooperative Housing Corporation: A corporation established in accordance with M.G.L. c. 157B or a corporation which has added an amendment to its articles to comply with M.G.L. c. 157B; the corporation must be organized and operated primarily for the benefit of low- and moderate-income persons, and its equity, after allowance for maximum transfer value of its stock, must be permanently dedicated to providing housing to persons of low- and moderate-income or to charitable purposes.

Low-Income Person or Family: A single person or family whose adjusted income is less than or equal to 80% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined from time to time by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to Section 8 of the United States Housing Act of 1937, as amended.

Mutual Housing:

(a) a group of cooperative housing corporations which provide support services to their members, including: housing development assistance, property management assistance and training for cooperative boards; or

(b) a Residential Housing Development, developed, owned and managed by a non-profit, tax-exempt mutual housing association in which current and future residents hold the majority membership.

Non-Profit Corporation: A corporation organized under M.G.L. c. 180 which may also be required to be a 501(c)(3) organization under the Internal Revenue Code at the time of Application or Loan closing. To qualify as a Non-Profit Corporation for purposes of the HIF program, no member, shareholder, officer or employee of the corporation or its board of directors can profit, in any way, from the HIF assistance or from the Project. The Non-Profit Corporation must also demonstrate, to the satisfaction of DHCD, the capability of managing all of its responsibilities to the Project.

Preservation of Housing: New capital financing for an Eligible Project that is already used for an Eligible Use. In this case, the Project can be funded through HIF I, HIF II, HIF III, or HIF IV only if the Project involves:

(a) (1) a transfer of ownership to a Non-Profit Corporation,

(2) physical improvements to the real estate, and

(3) improved forms of management and social services;

(b) an Expiring Use Restriction Housing project; or

(c) the preservation of an Alternative Form of Housing, as determined by DHCD.

Residential Housing Development/Residential Housing: Property that is predominantly used for housing and is in compliance with applicable laws and ordinances.

Single Room Occupancy Housing: A Residential Housing Development that contains single rooms to be leased to individuals, which is not a student dormitory, a religious order residence, or a private club, and which is subject to such other specific requirements as may be imposed by DHCD.

Special Needs Housing: A Residential Housing Development that provides special design features or support services for residents with special needs. Special needs residents may include, but are not limited to: persons with AIDS/HIV and battered women.

Total Development Costs: Total hard and soft costs of developing an Eligible Project, including the costs to purchase, design, construct and finance the Project.

Transitional Housing: A Residential Housing Development that provides shelter and social services to homeless persons or persons in need of a supportive housing environment. This type of housing has as its purpose transition of its residents to independent living within a reasonable period of time.

Very Low-Income Person or Family: A person or family whose adjusted income is less than or equal to 50% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined from time to time by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to Section 8 of the United States Housing Act of 1937, as amended.